

## PART 72—SEX OFFENDER REGISTRATION AND NOTIFICATION

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AUTHORITY: Pub. L. 109-248, 120 Stat. 587.

SOURCE: Order No. 2868-2007, 72 FR 8897, Feb. 28, 2007, unless otherwise noted.

### § 72.1 Purpose.

This part specifies the applicability of the requirements of the Sex Offender Registration and Notification Act to sex offenders convicted prior to the enactment of that Act. These requirements include registering and keeping the registration current in each jurisdiction in which a sex offender resides, is an employee, or is a student. The Attorney General has the authority to specify the applicability of the Act's requirements to sex offenders convicted prior to its enactment under sections 112(b) and 113(d) of the Act.

### § 72.2 Definitions.

All terms used in this part that are defined in section 111 of the Sex Offender Registration and Notification Act (title 1 of Pub. L. 109-248) shall have the same definitions in this part.

### § 72.3 Applicability of the Sex Offender Registration and Notification Act.

The requirements of the Sex Offender Registration and Notification Act apply to all sex offenders, including sex offenders convicted of the offense for which registration is required prior to the enactment of that Act.

*Example 1.* A sex offender is federally convicted of aggravated sexual abuse under 18 U.S.C. 2241 in 1990 and is released following imprisonment in 2007. The sex offender is subject to the requirements of the Sex Offender Registration and Notification Act and could be held criminally liable under 18 U.S.C. 2250 for failing to register or keep the registration current in any jurisdiction in which the sex offender resides, is an employee, or is a student.

*Example 2.* A sex offender is convicted by a state jurisdiction in 1997 for molesting a child and is released following imprisonment in 2000. The sex offender initially registers as required, but disappears after a couple of years and does not register in any other ju-

risdiction. Following the enactment of the Sex Offender Registration and Notification Act, the sex offender is found to be living in another state and is arrested there. The sex offender has violated the requirement under the Sex Offender Registration and Notification Act to register in each state in which he resides, and could be held criminally liable under 18 U.S.C. 2250 for the violation because he traveled in interstate commerce.

## PART 73—NOTIFICATIONS TO THE ATTORNEY GENERAL BY AGENTS OF FOREIGN GOVERNMENTS

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AUTHORITY: 18 U.S.C. 951, 28 U.S.C. 509, 510.

SOURCE: Order No. 1373-89, 54 FR 46608, Nov. 6, 1989, unless otherwise noted.

### § 73.1 Definition of terms.

(a) The term *agent* means all individuals acting as representatives of, or on behalf of, a foreign government or official, who are subject to the direction or control of that foreign government or official, and who are not specifically excluded by the terms of the Act or the regulations thereunder.

(b) The term *foreign government* includes any person or group of persons exercising sovereign de facto or de jure political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group or agency to which such sovereign de facto or de jure authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been regarded by the United States as a governing authority.

(c) The term *prior notification* means the notification letter, telex, or facsimile must be received by the addressee named in § 73.3 prior to commencing the services contemplated by the parties.

## § 73.2

(d) When used in 18 U.S.C. 951(d)(1), the term *duly accredited* means that the sending State has notified the Department of State of the appointment and arrival of the diplomatic or consular officer involved, and the Department of State has not objected.

(e) When used in 18 U.S.C. 951(d) (2) and/or (3), the term *officially and publicly acknowledged and sponsored* means that the person described therein has filed with the Secretary of State a fully-executed notification of status with a foreign government; or is a visitor, officially sponsored by a foreign government, whose status is known and whose visit is authorized by an agency of the United States Government; or is an official of a foreign government on a temporary visit to the United States, for the purpose of conducting official business internal to the affairs of that foreign government; or where an agent of a foreign government is acting pursuant to the requirements of a Treaty, Executive Agreement, Memorandum of Understanding, or other understanding to which the United States or an agency of the United States is a party and which instrument specifically establishes another mechanism for notification of visits by agents and the terms of such visits.

(f) The term *legal commercial transaction*, for the purpose of 18 U.S.C. 951(d)(4), means any exchange, transfer, purchase or sale, of any commodity, service or property of any kind, including information or intellectual property, not prohibited by federal or state legislation or implementing regulations.

### § 73.2 Exceptions.

(a) The exemption provided in 18 U.S.C. 951(d)(4) for a “legal commercial transaction” shall not be available to any person acting subject to the direction or control of a foreign government or official where such person is an agent of Cuba or any other country that the President determines (and so reports to the Congress) poses a threat to the national security interest of the United States for purposes of 18 U.S.C. 951; or has been convicted of or entered a plea of *nolo contendere* to any offense under 18 U.S.C. 792–799, 831, or 2381, or

under section 11 of the Export Administration Act of 1979, 50 U.S.C. app. 2410.

(b) The provisions of 18 U.S.C. 951(e)(2)(A) do not apply if the Attorney General, after consultation with the Secretary of State, determines and reports to Congress that the national security or foreign policy interests of the United States require that these provisions do not apply in specific circumstances to agents of such country.

(c) The provisions of 18 U.S.C. 951(e)(2)(B) do not apply to a person described in this clause for a period of more than five years beginning on the date of the conviction or the date of entry of the plea of *nolo contendere*.

[Order No. 1373–89, 54 FR 46608, Nov. 6, 1989, as amended by Order No. 3018–2008, 73 FR 73182, Dec. 2, 2008]

### § 73.3 Form of notification.

(a) Notification shall be made by the agent in the form of a letter, telex, or facsimile addressed to the Attorney General, directed to the attention of the National Security Division, except for those agents described in paragraphs (b) and (c) of this section. The document shall state that it is a notification under 18 U.S.C. 951, and provide the name or names of the agent making the notification, the firm name, if any, and the business address or addresses of the agent, the identity of the foreign government or official for whom the agent is acting, and a brief description of the activities to be conducted for the foreign government or official and the anticipated duration of the activities. Each notification shall contain a certification, pursuant to 28 U.S.C. 1746, that the notification is true and correct.

(b) Notification by agents engaged in law enforcement investigations or regulatory agency activity shall be in the form of a letter, telex, or facsimile addressed to the Attorney General, directed to the attention of Interpol–United States National Central Bureau. Notification by agents engaged in intelligence, counterintelligence, espionage, counterespionage or counterterrorism assignment or service shall be in the form of a letter, telex, or facsimile addressed to the Attorney General, directed to the attention of the nearest FBI Legal Attache. In case of